

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

GRACIE BAKED LLC, WECARE RG, INC., and MILLERCOBB LLC, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

GIFTROCKET, INC., TREMENDOUS, INC., NICHOLAS BAUM, KAPIL KALE, JONATHAN PINES, BENJAMIN KUBIC, SUNRISE BANKS, N.A., GIFTROCKET, LLC, TREMENDOUS LLC, and TREMENDOUS PARENT, INC.,

Defendants.

Case No. 22-CV-4019 (RPK) (VMS)

**DECLARATION OF RAPHAEL JANOVE IN SUPPORT OF PLAINTIFFS' COMBINED
CROSS-MOTION AND RESPONSE IN OPPOSITION TO BENJAMIN KUBIC'S
MOTION FOR SUMMARY JUDGMENT**

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*Attorney for Plaintiffs and the
Proposed Classes*

I, Raphael Janove, hereby declare as follows:

1. I make this declaration in support of Plaintiffs' combined Opposition and Cross-Motion for Summary Judgment in Response to Benjamin Kubic's Motion for Summary Judgment and Local Rule 56.1 Counter Statement and Affirmative Statement of Facts.

2. I am a partner in the law firm Janove PLLC, counsel of record for Gracie Baked LLC, WeCare RG, Inc., and Millercobb LLC (collectively, "Plaintiffs"). Based on my personal knowledge, I assert the facts set forth herein and, if called upon as a witness, I could and would competently testify thereto.

3. Attached hereto as **Exhibit 1** is a true and correct copy of Slack correspondence between Benjamin Kubic and Magnus von Koeller on May 4, 2023, bates stamped GR_0048815 and previously marked as Exhibit 108 in the deposition of Benjamin Kubic, with portions highlighted by Plaintiffs for the convenience of the Court.

4. Attached hereto as **Exhibit 2** is a true and correct copy of a PowerPoint presentation dated August 3, 2012 concerning the GiftRocket product, bates stamped GR_0000349 and previously marked as Exhibit 52 in the deposition of Kapil Kale.

5. Attached hereto as **Exhibit 3** is a true and correct copy of an undated internal GiftRocket document providing background information on the GiftRocket Prepaid Gift, bates stamped GR_0000523.

6. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts of the transcript of the deposition of Benjamin Kubic with highlights as to testimony cited in Plaintiffs' Memorandum of Law and/or Counter Statement of Material Facts, pages 14-16, 19-20, 24-28, 31-61, 85-87, 90-92, 94-97, 102-119, 136-138, 144-148, 151-159, 162-165, 183-188, 198-200, 218-220, 222-230, 251-253, 261-263, and 266-272.

7. Attached hereto as **Exhibit 5** is a true and correct copy of the slipsheet for the native file bates stamped GR_0014896, a salary table for employees of GiftRocket, Inc., that has been previously marked as Exhibit 21 in the deposition of GiftRocket, LLC. The native spreadsheet file for Exhibit 5 will be sent separately to the Court's clerk at the time of filing of all briefs and documents related to Defendant Benjamin Kubic's motion for summary judgment.

8. Attached hereto as **Exhibit 6** is a true and correct copy of an email chain between Nicolas Baum and Worldpay with the most recent email sent on January 25, 2022, bates stamped GR_0016591 and previously marked as Exhibit 31 in the deposition of Kapil Kale, with portions highlighted by Plaintiffs for the convenience of the Court.

9. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts of the transcript of the deposition of Kapil Kale with highlights as to testimony cited in Plaintiffs' Memorandum of Law and/or Counter Statement of Material Facts, pages 8-9, 11-17, 41-46, and 49-52.

10. Attached hereto as **Exhibit 8** is a true and correct copy of the LinkedIn profile of Benjamin Kubic as of March 5, 2025 at 9:06 PM ET, with portions highlighted by Plaintiffs for the convenience of the Court.

11. Attached hereto as **Exhibit 9** is a true and correct copy of GiftRocket, Inc.'s Certificate of Surrender filed July 7, 2021, bates stamped PLTFS000146 and previously marked as Exhibit 101 in the deposition of Benjamin Kubic.

12. Attached hereto as **Exhibit 10** is a true and correct copy of an Order Form and Subscription Agreement between GiftRocket, Inc. and Rippling signed by Benjamin Kubic on January 25, 2023, bates stamped RIPPLING_00001.

13. Attached hereto as **Exhibit 11** is a true and correct copy of an Order Form and Subscription Agreement between Tremendous LLC and Rippling acknowledged by Benjamin Kubic on July 17, 2023, bates stamped RIPPLING_00004.

14. Attached hereto as **Exhibit 12** is a true and correct copy of a Base Order Form and Subscription Agreement between GiftRocket, Inc. and Rippling signed by Benjamin Kubic on July 21, 2021, bates stamped RIPPLING_00021.

15. Attached hereto as **Exhibit 13** is a true and correct copy of an Order Form and Subscription Agreement between GiftRocket, Inc. and Rippling signed by Benjamin Kubic on February 8, 2022, bates stamped RIPPLING_00038.

16. Attached hereto as **Exhibit 14** is a true and correct copy of an Order Form and Subscription Agreement between GiftRocket, Inc. and Rippling signed by Benjamin Kubic on October 14, 2022, bates stamped RIPPLING_00041.

17. Attached hereto as **Exhibit 15** is a true and correct copy of Articles of Amendment filed with the state of Arizona on December 3, 2021, bates stamped GR_0048334.

18. Attached hereto as **Exhibit 16** is a true and correct copy of an internal GiftRocket document concerning the restructuring of Tremendous, Inc., bates stamped GR_0000967 and previously marked as Exhibit 125 in the deposition of Benjamin Kubic.

19. Attached hereto as **Exhibit 17** is a true and correct copy of excerpts of the transcript of the deposition of GiftRocket, LLC with highlights as to testimony cited in Plaintiffs' Memorandum of Law and/or Counter Statement of Material Facts, pages 54-57, 131-133, 135-138, 155-163, 204-206, and 238-241.

20. Attached hereto as **Exhibit 18** is a true and correct copy of excerpts of the transcript of the deposition of Nicolas Baum with highlights as to testimony cited in Plaintiffs' Memorandum

of Law and/or Counter Statement of Material Facts, pages 17-20, 169-171, 187-189, 223-240, 251-253, and 262-265.

21. Attached hereto as **Exhibit 19** is a true and correct copy of the slipsheet for the native file bates stamped GR_0050579, a stock ownership table for those with interest in Tremendous Parent, Inc. The native file for Exhibit 19 will be sent separately to the Court's clerk at the time of filing of all briefs and documents related to Defendant Benjamin Kubic's motion for summary judgment.

22. Attached hereto as **Exhibit 20** is a true and correct copy of a spreadsheet with various engineering tasks, bates stamped GR_0036459, with portions highlighted by Plaintiffs for the convenience of the Court. The native file for Exhibit 20 will be sent separately to the Court's clerk at the time of filing of all briefs and documents related to Defendant Benjamin Kubic's motion for summary judgment. The text highlighted by Plaintiffs appears in cell L2 of the native file.

23. Attached hereto as **Exhibit 21** is a true and correct copy of Slack correspondence between Benjamin Kubic and Magnus von Koeller on October 20, 2021, bates stamped GR_0048797 and previously marked as Exhibit 103 in the deposition of Benjamin Kubic, with portions highlighted by Plaintiffs for the convenience of the Court.

24. Attached hereto as **Exhibit 22** is a true and correct copy of excerpts of the transcript of the deposition of Jane Chang with highlights as to testimony cited in Plaintiffs' Memorandum of Law and/or Counter Statement of Material Facts, pages 14-16, 89-93, 164-169, and 181-183.

25. Attached hereto as **Exhibit 23** is a true and correct copy of Slack correspondence between Benjamin Kubic and Emily Russell on November 2, 2021, bates stamped GR_0049053.

26. Attached hereto as **Exhibit 24** is a true and correct copy of Slack correspondence between Benjamin Kubic and Magnus von Koeller on October 14, 2021, bates stamped GR_0048793, with portions highlighted by Plaintiffs for the convenience of the Court.

27. Attached hereto as **Exhibit 25** is a true and correct copy of email correspondence between Benjamin Kubic and himself on February 4, 2022, bates stamped GR_0050232, with portions highlighted by Plaintiffs for the convenience of the Court.

28. Attached hereto as **Exhibit 26** is a true and correct copy of Slack correspondence between Benjamin Kubic and Jane Chang on February 7, 2022, bates stamped GR_0048785 and previously marked as Exhibit 115 in the deposition of Benjamin Kubic.

29. Attached hereto as **Exhibit 27** is a true and correct copy of Slack correspondence between Benjamin Kubic and Jane Chang on February 11, 2022, bates stamped GR_0048786 and previously marked as Exhibit 116 in the deposition of Benjamin Kubic and as Exhibit 30 in the deposition of Kapil Kale.

30. Attached hereto as **Exhibit 28** is a true and correct copy of email correspondence between Benjamin Kubic, Sherri Baseley, and Jane Chang on March 28, 2022, bates stamped SB006352, previously marked as Exhibit 118 in the deposition of Benjamin Kubic.

31. Attached hereto as **Exhibit 29** is a true and correct copy of email correspondence between Benjamin Kubic and Sherri Baseley on April 29, 2022, bates stamped SB040717.

32. Attached hereto as **Exhibit 30** is a true and correct copy of Slack correspondence between Benjamin Kubic and Jane Chang on February 7, 2022, bates stamped GR_0049698 and previously marked as Exhibit 117 in the deposition of Benjamin Kubic.

33. Attached hereto as **Exhibit 31** is a true and correct copy of Slack correspondence between Benjamin Kubic and Jane Chang on January 27, 2022, bates stamped GR_0048784, with portions highlighted by Plaintiffs for the convenience of the Court.

34. Attached hereto as **Exhibit 32** is a true and correct copy of Slack correspondence between Benjamin Kubic and Jane Chang on December 20, 2022, bates stamped GR_0048788 and previously marked as Exhibit 121 in the deposition of Benjamin Kubic.

35. Attached hereto as **Exhibit 33** is a true and correct copy of Slack correspondence between Benjamin Kubic and Jane Chang on September 24, 2021, bates stamped GR_0048789 and previously marked as Exhibit 114 in the deposition of Benjamin Kubic.

36. Attached hereto as **Exhibit 34** is a true and correct copy of Slack correspondence between Benjamin Kubic and Jane Chang on December 3, 2021, bates stamped GR_0048782.

37. Attached hereto as **Exhibit 35** is a true and correct copy of Slack correspondence between Benjamin Kubic and Jane Chang on December 23, 2021, bates stamped GR_0048783.

38. Attached hereto as **Exhibit 36** is a true and correct copy of Slack correspondence between Benjamin Kubic and Nicolas Baum on February 7, 2022, bates stamped GR_0048766.

39. Attached hereto as **Exhibit 37** is a true and correct copy of Slack correspondence between Benjamin Kubic and Emily Russell on February 13, 2022, bates stamped GR_0049059 and previously marked as Exhibit 119 in the deposition of Benjamin Kubic.

40. Attached hereto as **Exhibit 38** is a true and correct copy of email correspondence between Benjamin Kubic and Emily Russell on April 11, 2023, bates stamped GR_0016635 and previously marked as Exhibit 123 in the deposition of Benjamin Kubic.

41. Attached hereto as **Exhibit 39** is a true and correct copy of Slack correspondence between Benjamin Kubic and Jane Chang on July 6, 2022, bates stamped GR_0048787.

42. Attached hereto as **Exhibit 40** is a true and correct copy of email correspondence between Benjamin Kubic and Emily Russell on January 31, 2023, bates stamped GR_0000972 and previously marked as Exhibit 120 in the deposition of Benjamin Kubic.

43. Attached hereto as **Exhibit 41** is a true and correct copy of Slack correspondence between Benjamin Kubic and Emily Russell on February 7, 2023, bates stamped GR_0049055 and previously marked as Exhibit 122 in the deposition of Benjamin Kubic.

44. Attached hereto as **Exhibit 42** is a true and correct copy of Slack correspondence between Benjamin Kubic and Emily Russell on February 9, 2023, bates stamped GR_0049060.

45. Attached hereto as **Exhibit 43** is a true and correct copy of email correspondence between Benjamin Kubic and Joshua Bonnain on May 9, 2023, bates stamped GR_0048248 and previously marked as Exhibit 133 in the deposition of Benjamin Kubic.

46. Attached hereto as **Exhibit 44** is a true and correct copy of email correspondence between Benjamin Kubic, Nicolas Baum, Kapil Kale, and Magnus von Koeller on May 1, 2023, bates stamped GR_0013718 and previously marked as Exhibit 130 in the deposition of Benjamin Kubic.

47. Attached hereto as **Exhibit 45** is a true and correct copy of an emailed meeting invitation between Benjamin Kubic, Kapil Kale, and Magnus von Koeller for June 30, 2023, bates stamped GR_0049843 and previously marked as Exhibit 137 in the deposition of Benjamin Kubic.

48. Attached hereto as **Exhibit 46** is a true and correct copy of Slack correspondence between Benjamin Kubic and Nicolas Baum on May 2, 2023, bates stamped GR_0048771 and previously marked as Exhibit 74 in the deposition of Nicolas Baum.

49. Attached hereto as **Exhibit 47** is a true and correct copy of Slack correspondence between Benjamin Kubic and Nicolas Baum on May 2, 2023, bates stamped GR_0049696 and previously marked as Exhibit 132 in the deposition of Benjamin Kubic.

50. Attached hereto as **Exhibit 48** is a true and correct copy of Slack correspondence between Benjamin Kubic and Nicolas Baum on May 14, 2023, bates stamped GR_0048774 and previously marked as Exhibit 136 in the deposition of Benjamin Kubic.

51. Attached hereto as **Exhibit 49** is a true and correct copy of Slack correspondence in the Slack channel project-yelp-api on May 10, 2023, bates stamped GR_0049770 and previously marked as Exhibit 76 in the deposition of Nicolas Baum.

52. Attached hereto as **Exhibit 50** is a true and correct copy of Slack correspondence in the Slack channel project-yelp-api on May 12, 2023, bates stamped GR_0049773 and previously marked as Exhibit 135 in the deposition of Benjamin Kubic.

53. Attached hereto as **Exhibit 51** is a true and correct copy of Slack correspondence in the Slack channel project-yelp-api on May 14, 2023, bates stamped GR_0049780.

54. Attached hereto as **Exhibit 52** is a true and correct copy of Slack correspondence in the Slack channel project-yelp-api on May 14, 2023, bates stamped GR_0049781 and previously marked as Exhibit 33 in the deposition of Kapil Kale.

55. Attached hereto as **Exhibit 53** is a true and correct copy of Slack correspondence in the Slack channel project-yelp-api on May 14, 2023, bates stamped GR_0049782.

56. Attached hereto as **Exhibit 54** is a true and correct copy of email correspondence between Sherri Baseley, Amy Jo Sudbeck, and Benjamin Kubic on January 13, 2022, bates stamped SB010607 and previously marked as Exhibit 139 in the deposition of Benjamin Kubic.

57. Attached hereto as **Exhibit 55** is a true and correct copy of email correspondence between Benjamin Kubic and Chris Stanley in January and March 2023, bates stamped GR_0049901 and previously marked as Exhibit 140 in the deposition of Benjamin Kubic, with portions highlighted by Plaintiffs for the convenience of the Court.

58. Attached hereto as **Exhibit 56** is a true and correct copy of the Master Disbursement Services Agreement between SouthState Bank and Tremendous, Inc. dated April 8, 2022, bates stamped GR_0049800.

59. Attached hereto as **Exhibit 57** is a true and correct copy of email correspondence between Sherri Baseley, Benjamin Kubic, and additional Sunrise Banks employees in July 2022, bates stamped SB012086.

60. Attached hereto as **Exhibit 58** is a true and correct copy of email correspondence between Sherri Baseley, Benjamin Kubic, and Nicolas Baum on June 1, 2022, bates stamped SB012679.

61. Attached hereto as **Exhibit 59** is a true and correct copy of an internal document discussing the transfer of funds associated with unredeemed GiftRocket products from Sunrise Banks to SouthState Bank, dated March 3, 2023, bates stamped GR_0049910 and previously marked as Exhibit 141 in the deposition of Benjamin Kubic.

62. Attached hereto as **Exhibit 60** is a true and correct copy of Slack correspondence between Benjamin Kubic and Magnus von Koeller on November 5, 2021, bates stamped GR_0048800 and previously marked as Exhibit 104 in the deposition of Benjamin Kubic, with portions highlighted by Plaintiffs for the convenience of the Court.

63. Attached hereto as **Exhibit 61** is a true and correct copy of Slack correspondence between Benjamin Kubic and Magnus von Koeller on December 2, 2022, bates stamped GR_0048804 and previously marked as Exhibit 105 in the deposition of Benjamin Kubic.

64. Attached hereto as **Exhibit 62** is a true and correct copy of Slack correspondence between Benjamin Kubic and Magnus von Koeller on December 23, 2022, bates stamped GR_0048767 and previously marked as Exhibit 106 in the deposition of Benjamin Kubic, with portions highlighted by Plaintiffs for the convenience of the Court.

65. Attached hereto as **Exhibit 63** is a true and correct copy of email correspondence from counsel for the GiftRocket Defendants to counsel for Plaintiffs in February 2025.

66. Attached hereto as **Exhibit 64** is a true and correct copy of the LinkedIn page for Tremendous as of March 9, 2023 at 10:50 AM, bates stamped PLTFS000149, with portions highlighted by Plaintiffs for the convenience of the Court.

67. Attached hereto as **Exhibit 65** is a true and correct copy of an internal report on GiftRocket's search engine optimization strategy, dated August 2021, bates stamped GR_0038075, with portions highlighted by Plaintiffs for the convenience of the Court.

68. Attached hereto as **Exhibit 66** is a true and correct copy of excerpts of the transcript of the deposition of Andrew Lorentz with highlights as to testimony cited in Plaintiffs' Counter Statement of Material Facts, pages 82-85.

69. Attached hereto as **Exhibit 67** is a true and correct copy of a PDF of the GiftRocket business landing page for Dimensions Massage Therapy as of December 22, 2022, bates stamped PLTFS000134 and previously marked as Exhibit 49 in the deposition of Kapil Kale.

70. Attached hereto as **Exhibit 68** is a true and correct copy of a screenshot of the Google search results for a search for "gift card dimensions massage spa", dated January 10, 2023

at 6:49 PM, bates stamped PLTFS000139 and previously marked as Exhibit 50 in the deposition of Kapil Kale.

71. Attached hereto as **Exhibit 69** is a true and correct copy of email correspondence from Trustpilot to Nicolas Baum containing a consumer complaint about GiftRocket, dated May 30, 2019 and bates stamped GR_0017836.

72. Attached hereto as **Exhibit 70** is a true and correct copy of email correspondence from Trustpilot to Nicolas Baum containing a consumer complaint about GiftRocket, dated June 18, 2019 and bates stamped GR_0017845.

73. Attached hereto as **Exhibit 71** is a true and correct copy of email correspondence from Trustpilot to Nicolas Baum containing a consumer complaint about GiftRocket, dated May 26, 2020 and bates stamped GR_0018278.

74. Attached hereto as **Exhibit 72** is a true and correct copy of a screenshot of the “How GiftRocket Works” page on the GiftRocket.com website as of January 30, 2023, taken July 21, 2023 and bates stamped GR_0005717.

75. Attached hereto as **Exhibit 73** is a true and correct copy of email correspondence between Stephanie Pfeifle and Aubrey Brosz on January 31, 2019, bates stamped SB020073.

76. Attached hereto as **Exhibit 74** is a true and correct copy of the slipsheet for the native file bates stamped GR_0038367, a month-by-month breakdown of GiftRocket’s revenue streams. The native file for Exhibit 74 will be sent separately to the Court’s clerk at the time of filing of all briefs and documents related to Defendant Benjamin Kubic’s motion for summary judgment.

77. Attached hereto as **Exhibit 75** is a true and correct copy of Google Analytics related to search traffic to the GiftRocket.com website, bates stamped GR_0038368.

78. Attached hereto as **Exhibit 76** is a true and correct copy of Slack correspondence in the Slack channel project-yelp-api on May 13, 2023, bates stamped GR_0049778, with portions highlighted by Plaintiffs for the convenience of the Court.

79. Attached hereto as **Exhibit 77** is a true and correct copy of Slack correspondence between Benjamin Kubic and Kapil Kale on August 12, 2021, bates stamped GR_0048757 and previously marked as Exhibit 127 in the deposition of Benjamin Kubic, with portions highlighted by Plaintiffs for the convenience of the Court.

80. Attached hereto as **Exhibit 78** is a true and correct copy of Slack correspondence between Benjamin Kubic and Nicolas Baum on September 7, 2021, bates stamped GR_0048764, with portions highlighted by Plaintiffs for the convenience of the Court.

81. Attached hereto as **Exhibit 79** is a true and correct copy of Slack correspondence between Benjamin Kubic and Christopher Peuker on March 22, 2024, bates stamped GR_0049704, with portions highlighted by Plaintiffs for the convenience of the Court.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on March 6, 2025.

/s/ Raphael Janove
Raphael Janove